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CHAPTER 56.

 SOUTH CAROLINA HAZARDOUS WASTE MANAGEMENT ACT

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 44‑56‑10.** Short title.

This chapter shall be cited as the “South Carolina Hazardous Waste Management Act”.

**SECTION 44‑56‑20.** Definitions.

Definitions as used in this chapter:

(1) “Board” means the South Carolina Board of Health and Environmental Control which is charged with responsibility for implementation of the Hazardous Waste Management Act.

(2) “Director” means the director of the department or his authorized agent.

(3) “Department” means the Department of Health and Environmental Control, including personnel thereof authorized by the board to act on behalf of the department or board.

(4) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(5) “Generation” means the act or process of producing waste materials.

(6) “Hazardous waste” means any waste, or combination of wastes, of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics may in the judgment of the department:

a. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes may include, but are not limited to, those which are toxic, corrosive, flammable, irritants, strong sensitizers, persistent in nature, assimilated, or concentrated in tissue, or which generate pressure through decomposition, heat, or other means. The term does not include solid or dissolved materials in domestic sewage, or solid dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act or the Pollution Control Act of South Carolina or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954.

(7) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(8) “Manifest” means the form used for identifying the quantity, composition, or origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(9) “Permit” means the process by which the department can ensure cognizance of, as well as control over the management of hazardous wastes.

(10) “Storage” means the actual or intended containment of wastes, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous wastes.

(11) “Transport” means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate treatment, storage or disposal.

(12) “Treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, reduced in volume, or suitable for final disposal.

(13) “Uncontrolled hazardous waste site” means any site where hazardous wastes or other hazardous substances have been released, abandoned, or otherwise improperly managed so that governmental response action is deemed necessary to remedy actual or potential damages to public health, the public welfare, or the environment.

For the purpose of this item the term “hazardous waste” does not include petroleum, including crude oil or fraction thereof; natural gas; natural gas liquids; liquified natural gas; synthetic gas usable for fuel; or mixtures of natural gas and such synthetic gas.

(14) “Response action” is any cleanup, containment, inspection, or closure of a site ordered by the director as necessary to remedy actual or potential damages to public health, the public welfare, or the environment.

**SECTION 44‑56‑30.** Promulgation of rules and regulations.

The board shall promulgate such regulations, procedures or standards as may be necessary to protect the health and safety of the public, the health of living organisms and the environment from the effects of improper, inadequate, or unsound management of hazardous wastes. Such regulations may prescribe contingency plans; the criteria for the determination of whether any waste or combination of wastes is hazardous; the requirements for the issuance of permits required by this chapter; standards for the transportation, containerization, and labeling of hazardous wastes consistent with those issued by the United States Department of Transportation; operation and maintenance standards; reporting and record keeping requirements; and other appropriate regulations.

**SECTION 44‑56‑35.** Regulations establishing standards for location of hazardous waste treatment, storage, and disposal facilities.

The department shall promulgate regulations establishing standards for the location of hazardous waste treatment, storage, and disposal facilities to more effectively ensure long‑term protection of human health and the environment. These standards shall be based solely upon the protection of human health and the environment.

The department shall have site suitability criteria promulgated and established no later than June 1, 1990.

Upon promulgation of these standards, any new facility shall comply with these standards prior to issuance of a Part B permit. For any existing facility, these new standards shall be incorporated and become a condition of any Part B permit. Failure to meet the site suitability standard regulations shall be deemed to be a failure to meet the conditions of the permit.

**SECTION 44‑56‑40.** Powers of department.

To carry out the provisions and purposes of this chapter, the department is authorized to:

1. Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as it deems appropriate, with other state, federal or interstate agencies, municipalities, educational institutions, local health departments, or other organizations or individuals;

2. Receive financial and technical assistance from the federal government and private agencies;

3. Participate in related programs of the federal government, other states, interstate agencies or other public or private agencies or organizations and collect and file such reports, surveys, inventories, data and information which may be required by the Federal Resource Conservation and Recovery Act of 1976;

4. Establish and collect fees for collecting samples and conducting laboratory analyses as may be necessary upon request of affected persons.

**SECTION 44‑56‑50.** Powers of commissioner.

Notwithstanding any other provision of this chapter, the director, upon receipt of information that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he determines to be necessary to protect the health of persons or the environment. The action the director may take may include, but is not limited to:

1. Issuing an order directing the operator of the treatment, storage or disposal facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation;

2. Requesting that the Attorney General commence an action enjoining such acts or practices. Upon a showing by the department that a person has engaged in such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted;

3. Issuing an order directing a response action by the department to eliminate the hazard and protect the public from exposure to the hazard; and

4. Requesting the Attorney General to commence an action to recover the costs of the response action from all parties liable under state or federal law.

**SECTION 44‑56‑59.** Findings; conclusions.

(A) The General Assembly finds:

(1) The existing commercial land disposal facility in South Carolina and available capacity in this State generally are limited resources;

(2) It is essential that the limited waste treatment and disposal capacity of the existing commercial facility and the State in general be preserved, ready and available to ensure that the needs of South Carolina are met first;

(3) The existing commercial land disposal facility as well as other hazardous waste treatment and disposal facilities must give preference to hazardous waste generators within the State for treatment and disposal of hazardous materials at licensed facilities in the State;

(4) The General Assembly and the Executive Branch have mandated restrictions on the importation of out‑of‑state wastes and on the capacity of existing hazardous waste landfills; and

(5) Reducing the amount of hazardous waste shipped to South Carolina commercial facilities will send a message to all states that South Carolina intends to reduce to the greatest extent possible the amount of hazardous waste treated and disposed of in this State.

(B) Based upon these findings, the General Assembly declares that:

(1) Landfilling is the least desirable method of managing hazardous waste and, in order to reduce potential risks to human health and the environment, reliance on landfilling must be reduced or eliminated when alternative disposal methods which are technologically and economically feasible are reasonably available within the State, through regional agreements between states, or through other means; and

(2) As this State reduces its reliance on landfilling through its waste minimization practices and other means, the amount of hazardous waste being shipped into this State for landfilling from locations outside of the State should be reduced and eliminated also.

**SECTION 44‑56‑60.** Annual evaluation; permit requirements; disposal limits; preference for in‑state generated waste.

(a)(1) In order to provide the General Assembly with the information it needs to accomplish the above goals, the Department of Health and Environmental Control shall evaluate annually the effects of new and existing waste management technologies, alternate methods of storage or disposal, recycling, incineration, waste minimization laws and practices, and other factors that tend to reduce the volume of hazardous waste. The results of the department’s evaluation must be reported to the General Assembly not later than February first of each year, beginning in 1991, in a form that will permit the General Assembly to determine whether or not hazardous waste landfill capacity in this State should be reduced.

(2) No person may construct, substantially alter, or operate a hazardous waste treatment, storage, or disposal facility or site, nor may a person transport, store, treat, or dispose of hazardous waste without first obtaining a permit from the department for the facility, site, or activity. Beginning July 1, 1990, permitted hazardous waste disposal sites are restricted to a rate of land disposal by burial not to exceed one hundred twenty thousand tons of hazardous waste for the twelve‑month period ending July 1, 1991. On July 1, 1991, permitted hazardous waste disposal sites are restricted to a rate of land disposal by burial not to exceed one hundred ten thousand tons of hazardous waste for each twelve‑month period thereafter within the permitted area of the site.

(3) During a twelve‑month period, the commissioner may allow land disposal by burial in excess of the limitation upon certification of the department that:

(A) disposal by land burial from a particular site in South Carolina is necessary to protect the health and safety of the people of this State; or

(B) at least one hundred ten thousand tons of hazardous waste disposed of by land burial in this State during the twelve‑month period was generated in South Carolina.

During each twelve‑month period, a person operating a hazardous waste disposal facility or site shall reserve at least the same capacity to dispose of hazardous waste generated in South Carolina that was disposed of by burial at that facility or site during the previous year excluding capacity that was used to dispose of hazardous waste pursuant to subitem (A). No more hazardous waste from out of state shall be buried in South Carolina than was buried in the previous twelve‑month period.

Certification must be issued to the party seeking to use land disposal of the waste, and the certification must be presented to the operator of the facility at the time of disposal. The facility shall submit this certification with its regular report to the department of permitted activity at the disposal site.

(b) Any person who:

1. Owns or operates a facility required to have a permit under this section which facility is in existence on the effective date of this section;

2. Has complied with the requirements of Section 44‑56‑120; and

3. Has made an application for a permit under this section is deemed to have been issued the permit until such time as final administrative disposition of each application is made by the department, unless final administrative disposition of each application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(c) Before issuance of a permit, the Department shall require:

1. Evidence of liability coverage for sudden and nonsudden accidental occurrences in an amount the Department may determine necessary for the protection of the public health and safety, and the environment;

2. Evidence of financial assurance in the form and amount as the Department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of a facility or site, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment. The Department shall assume continuing responsibility for environmental monitoring and for any response actions necessary to ensure the health and safety of the state’s citizens for any hazardous waste disposal or treatment sites permitted under this chapter when the facilities, sites, or activities close and all responsibilities required of any other party by any state or federal law or regulation cease. The Department’s responsibility for monitoring and response action is neither a limitation nor a termination of the liability of generators, transporters, or the operators of the facility under any provision of law or at common law.

3. Evidence of other financial assurance in such forms and amounts as the department determines to be necessary to ensure the adequate availability of funds for clean‑up costs and restoration of environmental impairment arising from the facility.

**SECTION 44‑56‑70.** Utilization of approved manifest systems.

All generators, transporters, and operators of hazardous waste storage, treatment, and disposal facilities shall utilize a manifest system as prescribed by the department to insure that all such hazardous waste generated is designated for storage, treatment, or disposal in storage, treatment, or disposal facilities, other than facilities on the premises where the waste is generated, which have been properly permitted for such purposes.

**SECTION 44‑56‑80.** Requirements of department; disclosure of information obtained by department.

A. The department shall require:

1. the establishment and maintenance of such records;

2. the making of such reports;

3. the taking of such samples, and the performing of such tests or analyses;

4. the installing, calibrating, using, and maintaining of such monitoring equipment or methods;

5. the providing of such other information; as may be necessary to achieve the purposes of this chapter.

B. Information obtained by the department under this chapter shall be available to the public, unless the department certifies such information as being proprietary. The department may make such certification where any person shows, to the satisfaction of the department, that the information, or parts thereof, if made public, would divulge methods, production rates, processes, or other confidential information entitled to protection. Nothing in this subsection shall be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the State concerned with effecting this chapter, providing such person respects the proprietary nature of the information.

**SECTION 44‑56‑90.** Inspections; obtaining samples.

(a) For the purpose of enforcing this chapter and Sections 44‑56‑160 through 44‑56‑190, or any regulations authorized pursuant thereto, any authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place where hazardous wastes are generated, stored, treated, or disposed of;

2. Inspect and copy any records, reports, information, or test results relating to the purpose of this chapter and Sections 44‑56‑160 through 44‑56‑190; and

3. Inspect and obtain samples from any person of any wastes including samples from any vehicles in which wastes are being transported, as well as samples of any containers or labels. The Department shall provide a sample of equal volume or weight to the owner, operator or agent in charge upon request. The Department shall also provide the owner, operator, or agent in charge a copy of the results of any analyses of such samples.

(b) For the purpose of implementing necessary governmental response actions as provided in Section 44‑56‑180, the Department or its authorized representative may, at any time, enter the premises of any publicly or privately owned property which it has determined to be an uncontrolled hazardous waste site. The owner or operator of such site shall cooperate fully with the department when such governmental response actions are taken.

**SECTION 44‑56‑100.** Modification or revocation of orders to prevent violations of chapter.

The board may issue, modify or revoke any order to prevent any violation of this chapter.

**SECTION 44‑56‑110.** Hearings.

The department may hold public hearings and compel the attendance of witnesses; conduct studies, investigations, and research with respect to the operation and maintenance of any hazardous waste treatment or disposal facilities or sites and issue, deny, revoke, suspend or modify permits under such conditions as it may prescribe for the operation of hazardous waste treatment or disposal facilities or sites; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing.

**SECTION 44‑56‑120.** Notification of department of identification and activity relating to hazardous wastes.

Not later than ninety days after final promulgation or revision of regulations under Section 44‑56‑30 identifying by its characteristics or listing any substance as hazardous waste subject to this chapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the department a notification stating the location and general description of such activity and the identified or listed hazardous waste handled by such person. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this chapter may be transported, treated, stored, or disposed of unless notification has been given as required under this section.

**SECTION 44‑56‑130.** Unlawful acts.

After the promulgation of the regulations required under Section 44‑56‑30:

(1) It shall be unlawful for any person to generate, store, transport, treat, or dispose of hazardous wastes in this State without reporting such activity to the department as required by such regulations.

(2) It shall be unlawful for any person to generate, store, transport, treat, or dispose of hazardous wastes in this State without complying with the procedures described in such regulations.

(3) It shall be unlawful for any person to fail to comply with this chapter and rules and regulations promulgated pursuant to this chapter; to fail to comply with any permit issued under this chapter; or to fail to comply with any order issued by the board, director, or department.

(4) It is unlawful for any person who owns or operates a waste treatment facility within this State to accept any hazardous waste generated in any jurisdiction which prohibits by law the treatment of that hazardous waste within that jurisdiction or which has not entered into an interstate or regional agreement for the safe treatment of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. Written documentation demonstrating compliance with this item must be submitted to the department before the transportation of any hazardous waste into the State for treatment.

(5) It is unlawful for any person who owns or operates a waste storage facility within this State to accept any hazardous waste generated in any jurisdiction which prohibits by law the storage of that hazardous waste within that jurisdiction or which has not entered into an interstate or regional agreement for the safe storage of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. Written documentation demonstrating compliance with this item must be submitted to the department before the transportation of any hazardous waste into the State for storage.

(6) It is unlawful for any person who owns or operates a waste disposal facility within this State to accept any hazardous waste generated in any jurisdiction which prohibits by law the disposal of that hazardous waste within that jurisdiction or which has not entered into an interstate or regional agreement for the safe disposal of hazardous waste pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. Written documentation demonstrating compliance with this item must be submitted to the department before the transportation of any hazardous waste into the State for disposal.

**SECTION 44‑56‑140.** Violations; penalties.

A. Whenever the department finds that any person is in violation of any permit, regulation, standard, or requirement under this Chapter, the department may issue an order requiring such person to comply with such permit, regulation, standard, or requirement, or the department may request that the Attorney General bring civil action for injunctive relief in the appropriate court; or, the department may request that the Attorney General bring civil enforcement action under subsection B of this section. Violation of any court order issued pursuant to this section shall be deemed contempt of the issuing court and punishable therefor as provided by law. The department may also invoke civil penalties as provided in this section for violations of the provisions of this chapter, including any order, permit, regulation or standard. Any person against whom a civil penalty is invoked by the department may appeal the decision of the department to the Court of Common Pleas in Richland County.

B. Any person who violates any provision of Section 44‑56‑130 shall be liable for a civil penalty not to exceed twenty‑five thousand dollars per day of violation.

C. Any person who willfully violates any provision of Section 44‑56‑130 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than twenty‑five thousand dollars per day of violation or imprisoned for not more than one year or both, if the conviction is for a second or subsequent offense; the punishment shall be by a fine not to exceed fifty thousand dollars per day of violation, or imprisonment not to exceed two years, or both.

D. Each day of noncompliance with any order issued pursuant to this chapter, or noncompliance with any permit, regulation, standard or requirement pursuant to Section 44‑56‑130 shall constitute a separate offense.

E. The violations referred to in this section shall be reported by the department to the governing body of the county or municipality concerned within twenty‑four hours.

**SECTION 44‑56‑160.** Hazardous Waste Contingency Fund; disposition of fees collected and earnings and interest thereon.

[Section effective until July 1, 2009. See, also, section effective July 1, 2009.]

(A) The Department of Health and Environmental Control is directed to establish a Hazardous Waste Contingency Fund to ensure the availability of funds for response actions necessary at permitted hazardous waste landfills and necessary from accidents in the transportation of hazardous materials and to defray the costs of governmental response actions at uncontrolled hazardous waste sites. The contingency fund must be financed through the imposition of fees provided in Sections 44‑56‑170 and 44‑56‑510 and annual appropriations which must be provided by the General Assembly.

(B) Of the fees collected pursuant to Section 44‑56‑170(C), (D), and (E), and credited to the contingency fund pursuant to Section 44‑56‑175:

(1) thirteen percent must be held separate and distinct within the fund in a permitted site fund for the purpose of response actions arising from the operation of the permitted land disposal facilities in this State;

(2) sixty‑two percent must be held separate and distinct within the fund to defray the costs of governmental response actions at uncontrolled hazardous waste sites and for the purpose of response actions arising from accidents occurring within the State in the transportation of hazardous materials;

(3) five percent must be used to fund hazardous waste reduction and minimization activities of the department pursuant to Section 44‑56‑165;

(4) eighteen percent must be remitted to and expended by the Hazardous Waste Management Research Fund in accordance with Section 44‑56‑810;

(5) two percent must be returned to the governing body of a county in which a permitted commercial land disposal facility is located.

(C) From the fees imposed by Section 44‑56‑170(C) and (E) and credited to permitted sites pursuant to subsection (B), twenty‑seven percent must be held separate and distinct within the fund for the purpose of being returned to the governing body of a county in which a permitted commercial land disposal facility is located. The funds returned to a county pursuant to this subsection or subsection (B) must be used by the local law enforcement, fire, health care, and emergency units to provide protection, assistance, and emergency preparedness for any contingency which might arise from the transportation and disposal site within the county. The county governing body, shall distribute the funds in an equitable manner to the involved local units including, but not limited to, municipalities and special purpose districts, as well as county entities. The State Treasurer shall disburse the funds quarterly to counties which contain commercial hazardous waste land disposal sites.

(D) From the fees imposed by Section 44‑56‑170(C) and (E) and credited to uncontrolled sites and transportation accidents pursuant to subsection (B), five percent must be returned to and used by the governing body of the Town of Pinewood to fund the Pinewood Hazardous Waste Contingency Fund as established in Section 44‑56‑163.

(E) All fees collected pursuant to Section 44‑56‑170(D) must be credited to the fund for uncontrolled sites and transportation accidents.

(F) Of the fees collected pursuant to Section 44‑56‑510 and credited to the contingency fund pursuant to Section 44‑56‑175:

(1) twenty‑six percent must be credited to the fund for permitted sites; and

(2) seventy‑four percent must be credited to the fund for uncontrolled sites and transportation accidents.

(G) Any interest accruing from the management of the funds held pursuant to this section must be credited to the general fund of the State, except earnings on the permitted site fund which must be credited to that fund, and earnings on the Pinewood Hazardous Waste Contingency Fund must be credited to that fund.

**SECTION 44‑56‑160.** Hazardous Waste Contingency Fund; disposition of fees collected and earnings and interest thereon.

[Section effective July 1, 2009.]

(A) The Department of Health and Environmental Control is directed to establish a Hazardous Waste Contingency Fund to ensure the availability of funds for response actions necessary at permitted hazardous waste landfills and necessary from accidents in the transportation of hazardous materials and to defray the costs of governmental response actions at uncontrolled hazardous waste sites. The contingency fund must be financed through the imposition of fees provided in Sections 44‑56‑170 and 44‑56‑510 and annual appropriations which must be provided by the General Assembly.

(B) Of the fees collected pursuant to Section 44‑56‑170(C), (D), and (E), and credited to the contingency fund pursuant to Section 44‑56‑175:

(1) thirteen percent must be held separate and distinct within the fund in a permitted site fund for the purpose of response actions arising from the operation of the permitted land disposal facilities in this State;

(2) sixty‑two percent must be held separate and distinct within the fund to defray the costs of governmental response actions at uncontrolled hazardous waste sites and for the purpose of response actions arising from accidents occurring within the State in the transportation of hazardous materials;

(3) five percent must be used to fund hazardous waste reduction and minimization activities of the department pursuant to Section 44‑56‑165;

(4) eighteen percent must be remitted to and expended by the Hazardous Waste Management Research Fund in accordance with Section 44‑56‑810;

(5) two percent must be returned to the governing body of a county in which a permitted commercial land disposal facility is located.

(C) From the fees imposed by Section 44‑56‑170(C) and (E) and credited to permitted sites pursuant to subsection (B), twenty‑seven percent must be held separate and distinct within the fund for the purpose of being returned to the governing body of a county in which a permitted commercial land disposal facility is located. The funds returned to a county pursuant to this subsection or subsection (B) must be used by the local law enforcement, fire, health care, and emergency units to provide protection, assistance, and emergency preparedness for any contingency which might arise from the transportation and disposal site within the county. The county governing body, shall distribute the funds in an equitable manner to the involved local units including, but not limited to, municipalities and special purpose districts, as well as county entities. The State Treasurer shall disburse the funds quarterly to counties which contain commercial hazardous waste land disposal sites.

(D) From the fees imposed by Section 44‑56‑170(C) and (E) and credited to uncontrolled sites and transportation accidents pursuant to subsection (B), five percent must be returned to and used by the governing body of the Town of Pinewood to fund the Pinewood Hazardous Waste Contingency Fund as established in Section 44‑56‑163.

(E) All fees collected pursuant to Section 44‑56‑170(D) must be credited to the fund for uncontrolled sites and transportation accidents.

(F) Of the fees collected pursuant to Section 44‑56‑510 and credited to the contingency fund pursuant to Section 44‑56‑175:

(1) twenty‑six percent must be credited to the fund for permitted sites; and

(2) seventy‑four percent must be credited to the fund for uncontrolled sites and transportation accidents.

(G) Any interest accruing from the management of the funds held pursuant to this section must be credited to the Hazardous Waste Contingency Fund and is authorized for expenditure by the department to defray costs of governmental response actions at uncontrolled hazardous waste sites and for the purpose of response actions incidental to the transportation of hazardous materials, except earnings on the permitted site fund which must be credited to that fund, and earnings on the Pinewood Hazardous Waste Contingency Fund must be credited to that fund.

**SECTION 44‑56‑163.** Pinewood Hazardous Waste Contingency Fund; Pinewood Development Fund.

(A) There is created a Pinewood Hazardous Waste Contingency Fund to ensure the availability of funds for response actions necessary at the hazardous waste landfill located adjacent to the Town of Pinewood. This contingency fund is financed pursuant to Section 44‑56‑160(D). The monies from this fund must be returned to the governing body of the Town of Pinewood which must be used by its law enforcement, fire, health care, and emergency units to provide protection, assistance, and emergency preparedness for any contingency which might arise from the transportation and disposal site within the municipality. The State Treasurer shall disburse the funds quarterly to the governing body of the Town of Pinewood. Any interest accruing from the management of the funds held pursuant to Section 44‑56‑160 or this section must be credited to this contingency fund.

(B) There is created the Pinewood Development Fund in the Office of the State Treasurer. This fund must be financed through fees provided in Sections 44‑56‑170 and 44‑56‑510 and credited to this fund pursuant to Section 44‑56‑175. This fund must be used for economic development in the Pinewood area in Sumter or Clarendon County within a five‑mile radius of the Pinewood Hazardous Waste Landfill. All funds in the Pinewood Development Fund, including interest earned on the fund, must be remitted quarterly by the State Treasurer to the City of Pinewood and expended pursuant to this subsection.

**SECTION 44‑56‑164.** Pinewood Development Authority; creation; composition; purpose; powers.

(A) There is created the Pinewood Development Authority a body politic and corporate. The authority shall consist of these ex officio members:

(1) the chairman of the Sumter County Council or a council member designated by the chairman;

(2) the chairman of the Clarendon County Council or a council member designated by the chairman;

(3) one member of the Sumter County Council who represents the geographical area within which this fund may be used for economic development;

(4) one member of the Clarendon County Council who represents the geographical area within which this fund may be used for economic development.

(B) The authority shall approve, by a majority vote, the expenditure of funds from the Pinewood Development Fund, as created in Section 44‑56‑164(B) and may acquire and develop real and personal property and exercise all powers incidental to developing the Pinewood area pursuant to Section 44‑56‑164(B).

**SECTION 44‑56‑165.** Use of fees imposed under Section 44‑56‑170; hazardous waste reduction and minimization activities; enforcement of bans on certain acts.

The fees imposed under Section 44‑56‑170(C) and (E), and distributed in accordance with Section 44‑56‑160(B)(3) must be used to fund hazardous waste reduction and minimization activities of the department. Funding for this activity is not limited to the amount collected annually and may be supported by general appropriation of the General Assembly. Aqueous wastes which are hazardous only because of pH are exempt from this fee if they are generated and treated on site in a permitted wastewater treatment plant. In addition to funding hazardous waste reduction and minimization activities, the fees also must be used to enforce the bans set forth in Section 44‑56‑130(4), (5), and (6).

**SECTION 44‑56‑170.** Hazardous Waste Contingency Fund: reports, fees and administration of fund.

(A) Each generator shall, no later than thirty days after the end of each calendar quarter, submit a written report to the Department including, but not limited to, the following information:

1. Effective October 1, 1985, certification that he has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable;

2. Effective October 1, 1985, certification that the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment;

3. the types and quantities of hazardous wastes generated;

4. the types and quantities of these wastes shipped for treatment and disposal by landfilling or other means of land disposal;

5. the types and quantities of these wastes remaining in storage at the end of the reporting period; and

6. a check made payable to the Department for the amount of fee imposed on these wastes by the provisions of paragraph (C.)

(B) Each owner/operator of a hazardous waste facility shall, no later than thirty days after the end of each calendar quarter, submit a written report to the Department including, but not limited to, the following information:

1. the types and quantities of hazardous wastes generated;

2. the types and quantities of hazardous wastes received at the facility during the reporting period;

3. the types and quantities of hazardous wastes treated, disposed of, and otherwise handled during the reporting period; and

4. a check made payable to the Department for the amount of fees imposed by paragraph (C) for any wastes generated by the facility and handled in such manner as prescribed by its provisions; by paragraph (D) and by paragraph (E.)

Each owner/operator of a hazardous waste facility is, no later than thirty days after the end of each calendar quarter, required to submit to the Department certification from any out‑of‑state generator that effective October 1, 1985:

(1) The generator has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) The proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment;

(C) There is imposed a fee of thirty‑four dollars a ton of hazardous wastes generated and disposed of in this State by landfilling or other means of land disposal.

(D) There is hereby imposed a fee of one dollar per ton of hazardous wastes in excess of fifty tons remaining in storage at the end of the reporting period.

(E) For all hazardous wastes generated outside of the State and received at a facility during the quarter each owner/operator of a hazardous waste land disposal facility shall remit to the department an amount equal to the per ton fee imposed on out‑of‑state waste by the state from which the hazardous waste originated but in any event no less than thirty‑four dollars a ton.

(F)(1) There is imposed a fee of ten dollars a ton on the incineration of hazardous waste in this State whether the waste was generated within or outside of this State. Fees imposed by this subsection must be based on the amount of hazardous waste collected by the facility for incineration and must not include any nonhazardous materials added to the hazardous waste at the incineration facility for purposes of fuel blending. These fees must be collected by the facility at which it is incinerated and remitted to the State Treasurer to be placed into a fund separate and distinct from the state general fund entitled “Hazardous Waste Fund County Account”.

(2)(a) This fee must be credited to the benefit of the county where the incineration of the hazardous waste generating the fee occurred. If the amount of funds credited to a particular county exceeds five hundred thousand dollars annually, the excess over five hundred thousand dollars must be credited to the general fund of the State.

(b) Effective July 1, 2000, the provisions of subitem (a) are no longer effective and the fee must be allocated in the following manner: fifty percent to the county where the incineration of the hazardous waste generating the fee occurred and fifty percent to the general fund of the State.

(3) Funds in each county’s account must be released by the State Treasurer upon the written request of a majority of the county’s legislative delegation and used for infrastructure within the economically depressed area of that county.

(4)(a) For purposes of this subsection, “county legislative delegation” includes only those members who represent the economically depressed areas of the county.

(b) For purposes of this subsection, “incineration” includes hazardous waste incinerators, boilers, and industrial furnaces.

(c) For the purpose of this subsection “infrastructure” means improvements for water, sewer, gas, steam, electric energy, and communication services made to a building or land which are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

(i) improvements to both public water and sewer systems;

(ii) improvements to public electric, natural gas, and telecommunication systems; and

(iii) fixed transportation facilities including highway, road, rail, water, and air.

**SECTION 44‑56‑175.** Crediting of fees imposed pursuant to Sections 44‑56‑170(C), (E), and (F) and 44‑56‑510.

(A) Of the fees imposed pursuant to Section 44‑56‑170(C) and (E):

(1) eighty‑three percent must be credited to the Hazardous Waste Contingency Fund;

(2) two percent must be credited to the Pinewood Development Fund; and

(3) fifteen percent must be credited to the general fund.

(B) Of the fees imposed pursuant to Section 44‑56‑510:

(1) fifty‑three percent must be credited to the Hazardous Waste Contingency Fund;

(2) twenty percent must be credited to the Pinewood Development Fund; and

(3) twenty‑seven percent must be credited to the general fund.

(C) All fees imposed pursuant to Section 44‑56‑170(F) must be credited to the general fund.

**SECTION 44‑56‑180.** Hazardous Waste Contingency Fund: suspension or reduction of fees on accumulation of fund.

(a) In determining the use of the fund for a particular governmental response action, the department shall consider the relative risk of danger to public health or welfare or the environment and the hazard potential of the substances involved including potential for fire, explosions, release of harmful air contaminants, direct human contact, contamination of surface water or groundwater including those used for drinking water supplies, and damages to sensitive ecosystems. With approval of the Hazardous Waste Management Select Oversight Committee, as established under Section 44‑56‑840, funds specified for governmental response actions must be available to the department for personnel and operating costs to implement its program for conducting these response actions. The department must, concurrent with taking a governmental response action, initiate the appropriate administrative action to exhaust any applicable liability insurance or other financial assurance mechanisms which have been provided by the responsible party and, where appropriate, funds available through P.L. 96‑510. Use of the Fund for a response action is not stayed by any action for recovery. The department must initiate any legal actions which reasonably may result in recovery from the parties liable for the conditions necessitating the response action. Any funds recovered in relation to a response action from whatever source are to be placed in the Fund.

(b) The Department shall annually make a report to the General Assembly on the activities and response actions that have been carried out under the auspices of the Contingency Fund. The Department shall annually provide a report to the committees of each House with oversight of industry and natural resources on its program to identify and clean up uncontrolled hazardous waste sites. The appropriate committees shall have the authority to study the transportation and disposal of hazardous waste in South Carolina.

**SECTION 44‑56‑190.** Hazardous Waste Contingency Fund: inconsistent regulations to be revised.

The Department is directed to revise and amend the necessary provisions of R. 61‑79 (DHED) which are contrary or inconsistent with the provisions of Sections 44‑56‑160 through 44‑56‑190.

**SECTION 44‑56‑200.** Department of Health and Environmental Control may implement and enforce Public Law 96‑510 relating to hazardous waste cleanup; owner defined.

(A) The Department of Health and Environmental Control is empowered to implement and enforce the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96‑510), and subsequent amendments to Public Law 96‑510 as of the effective date of the amendments.

(B)(1) Subject to the provisions of Section 107 of Public Law 96‑510 and its subsequent amendments which pursuant to this section are incorporated and adopted as the law of this State, the department is empowered to recover on behalf of the State all response costs expended from the Hazardous Waste Contingency Fund or from other sources, including specifically punitive damages in an amount at least equal to and not more than three times the amount of costs incurred by the State whether before or after the enactment of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and its subsequent amendments.

(2) For purposes of this section, “owner” does not include:

(a) a unit of state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign, including acquisitions made by a forfeited land commission pursuant to Chapter 59, Title 12. The exclusion provided under this paragraph shall not apply to any state or local government which voluntarily acquires a facility or has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a state or local government shall be subject to the provisions of this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity.

(b) a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

(i) an act of God;

(ii) an act of war;

(iii) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (A) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (B) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

**SECTION 44‑56‑205.** Facilities to give preference to waste generators within the State.

All hazardous waste treatment and disposal facilities in South Carolina shall give preference to hazardous waste generators within the State of South Carolina for treatment and disposal of hazardous materials at licensed facilities in the State.

**SECTION 44‑56‑210.** Appointment for full‑time health inspectors.

The Department of Health and Environmental Control, in its discretion, shall assign not more than two full‑time health inspectors to serve at each commercial hazardous waste treatment, storage, and disposal facility located in South Carolina for the purpose of assuring the protection of the health and safety of the public by monitoring the receipt and handling of hazardous waste at these sites. For any facilities to which a full‑time inspector is not assigned, there must be one or more inspectors who shall monitor these facilities on a rotating basis.

The department shall implement a fee schedule to cover the costs of implementing this inspection program and the fees must be collected by the facilities from the hazardous waste generators utilizing these sites.

ARTICLE 2.

 INFORMATION REQUIREMENTS

**SECTION 44‑56‑215.** Assessment of fees against companies generating hazardous waste.

The department is authorized to assess each company generating hazardous waste a fee based on the amount of hazardous waste generated. A large quantity generator, as determined by Regulation 61‑79.262, producing more than one hundred tons of hazardous waste per year shall be assessed an annual base fee of one thousand dollars per facility and a one dollar and fifty cents per ton fee for all hazardous waste the company generates. A large quantity generator producing one hundred tons or less of hazardous waste shall be assessed an annual fee of one thousand dollars. A small quantity generator shall be assessed an annual fee of five hundred dollars. Fees collected pursuant to this section shall not exceed an annual cost of fifteen thousand dollars per generator. Companies subject to fees required by Section 44‑56‑170(F)(1) are exempt from fees established by this section. The fees collected pursuant to this section shall be deposited to the Hazardous Waste Contingency Fund for response actions at uncontrolled hazardous waste sites.

**SECTION 44‑56‑220.** Information requirements of entity providing financial assurance for hazardous waste treatment or disposal facility or site.

(A) Upon written request of the department, the entity providing financial assurance for a hazardous waste treatment or disposal facility or site regulated under this chapter shall furnish to the department information concerning its financial integrity, as shall be specified in the department’s request to permit the department to review the nature, degree, and sufficiency of the financial assurances submitted by such entity. Information pertaining to the financial integrity of any parent, subsidiary, or affiliated corporations may also be required, in the event such parent, subsidiary, or affiliated corporation provides, in whole or in part, the financial assurances required by the department. The information required by this subsection may include, but not be limited to, a certified audited financial statement, a balance sheet, and a profit and loss statement.

(B) If, in the judgment of the department, the information referred to in subsection (A) is not furnished within a reasonable time or if so furnished is not satisfactory to the department, the department shall give by written notice to such entity the particulars in which such information is insufficient to permit the department to review the nature, extent, and sufficiency of the required financial assurance and such entity shall have a reasonable time in which to comply with the requirements of such notice in the particulars therein mentioned.

(C) If it is desired for any reason to verify the information furnished under subsection (A) or (B), the department in person or by its agents shall make such examination of the records of and such inspections of the properties of the entities referred to in subsection (A) as shall be necessary to procure the information required. Upon sufficient notice, the department may require the production of the desired writings and records and the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the department may designate. The expense of the necessary examination or inspection for the procuring of the information must be paid by the party so examined or inspected. The expenses may be collected by suit or action, if necessary, except that if the examination and inspection and reports thereof disclose that a sufficient response had previously been made pursuant to the requirements of the department in regard thereto the expense of making the examination and inspection must be paid out of the funds of the department.

ARTICLE 3.

 IMMUNITY FROM CIVIL DAMAGES

**SECTION 44‑56‑310.** Definitions.

As used in this article:

(A) “Discharge” means leakage, seepage, or other release.

(B) “Hazardous materials” means all materials and substances defined as hazardous by any state or federal law or regulation.

(C) “Person” means any individual, partnership, corporation, association, or other entity.

**SECTION 44‑56‑320.** Attempts to mitigate effects of discharge; immunity.

Any person who in good faith gratuitously provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up, or dispose of any such discharge, is not subject to civil damages unless an injury or damages result from the gross negligence, recklessness, or intentional misconduct of such person.

**SECTION 44‑56‑330.** Applicability.

The immunities provided in Section 44‑56‑320 apply only to any person:

(A) Whose act or omission did not cause the actual or threatened discharge and who would not otherwise be liable therefor, or

(B) Who renders such assistance or advice voluntarily and without compensation, or who is an employee of an industry, corporation, or group which renders such advice or assistance without compensation.

ARTICLE 4.

 DRYCLEANING FACILITY RESTORATION TRUST FUND

**SECTION 44‑56‑410.** Definitions.

As used in this article:

(1) “Department” means the Department of Health and Environmental Control.

(2) “Discharge” means leakage, seepage, or other release.

(3) “Drycleaning facility” means a professional retail commercial establishment located in this State that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics from members of the public utilizing a process which involves the use of drycleaning solvents. “Drycleaning facility” includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process, but does not include textile mills or uniform rental and linen supply facilities.

(4) “Drycleaning solvents” means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated cleaners, and their breakdown products. “Drycleaning solvents” includes only solvents originating from use at a drycleaning facility or by a wholesale supply facility.

(5) “Dry drop‑off facility” means a commercial retail store that receives from customers clothing and other fabrics for drycleaning at an off‑site drycleaning facility and does not clean the clothing or fabrics at the store utilizing drycleaning solvents.

(6) “Employee” means a natural person employed and paid by the owner of a drycleaning facility for thirty‑five or more hours a week for forty‑five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Employment Security Commission or Department of Revenue as required by law. Excluded from the meaning of the term “employee” are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and compensated pursuant to the definition of the term “employee” contained in this item. Part‑time employees who are employed and paid for fewer than thirty‑five hours a week for fewer than forty‑five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part‑time employee or employees, total thirty‑five or more hours a week for forty‑five or more weeks a year.

(7) “Person” means any individual, partnership, corporation, association, or other entity that is vested with ownership, dominion, or legal or rightful title to the real property or which has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

(8) “Wholesale supply facility” means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

(9) “Insolvent” means the approved expenses of the Department of Health and Environmental Control and the Department of Revenue as well as the estimated cleanup costs are projected to exceed the fund balance and projected revenues for a five‑year period commencing on January fifteenth of each year.

(10) “Halogenated drycleaning fluid” means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume any of the halogenated compounds chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include perchloroethylene (also known as tetrachloroethylent), trichlorethylene, and any breakdown components of them.

(11) “Nonhalogenated cleaner” means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated compound. Nonhalogenated cleaners include petroleum based drycleaning solvents and any breakdown components of them.

(12) “Nonaqueous solvent” means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty‑one of water by volume.

**SECTION 44‑56‑420.** Drycleaning Facility Restoration Trust Fund established.

(A) There is created in the state treasury a separate and distinct account called the “Drycleaning Facility Restoration Trust Fund”, revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the Department of Health and Environmental Control and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section, the tax revenues levied, collected, and credited pursuant to Section 44‑56‑480, and the registration fees collected pursuant to Section 44‑56‑470 must be credited to the fund. Charges against the fund must be made in accordance with the provisions of this section. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this section. At no time shall monies from the general fund be obligated to supplement the fund. The State may recover to the fund any funds expended from the fund which were not utilized in accordance with this article.

(B) Whenever incidents of contamination by drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities pose a threat to the environment or the public health, safety, or welfare, the department shall obligate monies available in the fund pursuant to this section to provide for:

(1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a person must pay for the cost of the investigation and assessment up to the amount of the owner’s, operator’s, or person’s deductible, and the department only shall provide monies that exceed the owner’s, operator’s, or person’s deductible; however, in order to receive these monies the owner, operator, or person must comply with this article and the regulations promulgated under this article;

(2) the expeditious treatment, restoration, or replacement of potable water supplies;

(3) the rehabilitation of contaminated drycleaning facility sites, which consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost‑effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection and rehabilitation criteria established by the department, except that nothing in this article may be construed to authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation;

(4) the maintenance and monitoring of contaminated sites;

(5) the inspection and supervision of activities described in this section;

(6) the expenses of administering the fund by the department including the employment of department staff to carry out the department’s duties described in this article; however, the department may exclude five percent of the average annual collections of the fund or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater;

(7) the payment of reasonable costs of restoring property so as to assure public health and safety, as determined by the department.

(C) The fund may not be used to:

(1) restore sites which are contaminated by solvents normally used in drycleaning operations if the activities at a site are not related to the operation of a drycleaning facility or wholesale supply facility;

(2) restore sites that are contaminated by drycleaning solvents being transported to or from a drycleaning facility or wholesale supply facility or that are contaminated as a result of the delivery of drycleaning solvents to a drycleaning facility or wholesale supply facility on or after July 1, 1995, if the contamination resulted from gross negligence;

(3) fund any costs related to the restoration of a site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

(4) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a person under local, state, or federal law;

(5) pay any costs incurred before July 1, 1995, for the remediation of a contaminated site;

(6) pay any costs to landscape or otherwise artificially improve a contaminated site;

(7) pay any contamination assessment or costs restoration before the actual date of the first payment of registration fees for the site pursuant to Section 44‑56‑470(B);

(8) pay any costs related to contamination assessment where no contamination from drycleaning solvents is discovered;

(9) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;

(10) restore sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a professional retail drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;

(11) restore sites that are no longer operated as drycleaning facilities or coin‑operated drycleaning facilities where the owner or person has not paid a registration fee for the site pursuant to Section 44‑56‑470(B) and has not been involved in the drycleaning industry after October 1, 1995.

(D) The department shall promulgate regulations that provide for an initial contamination assessment to determine whether a drycleaning facility or wholesale supply facility is contaminated by drycleaning solvents. Payment for the initial assessment is as provided for in subsection (B), and site rehabilitation portions of the program must be administered through direct payments to contractors actually accomplishing the site rehabilitation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or persons. All services related to site rehabilitation must be preapproved by the department before performance in order to receive payment for services rendered.

(E) If the committed money in the fund exceeds the current fund balance and the department declares a site is an emergency, the owner or operator of the drycleaning facility, wholesale facility, or person is liable for the cost of that cleanup. However, once the fund has funds available, the owner, operator, or person who paid for the approved cleanup must be reimbursed for the costs incurred to clean up the site through annual payments which may not exceed five percent of the total fund’s average annual balance if the cleanup complies with the provisions of this article or regulations promulgated under this article. The fund may not obligate itself for more than it is estimated to generate through surcharges, annual fees, and registration fees.

**SECTION 44‑56‑430.** Environmental surcharge.

(A)(1) One percent of the gross proceeds of sales of a drycleaning facility must be levied as an environmental surcharge on every owner or operator of a drycleaning facility participating in the drycleaning facility restoration trust fund except for the facilities possessing a valid statement of nonparticipation pursuant to Section 44‑56‑480(A).

(2) At any time the uncommitted balance of the Drycleaning Facility Restoration Trust Fund Account exceeds five million dollars, the one percent of the gross proceeds of sales of drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The Department of Health and Environmental Control is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is so notified by the Department of Health and Environmental Control. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is so notified by the Department of Health and Environmental Control.

(B)(1) The initial surcharge imposed by this section is due and payable on the twentieth day of the third month succeeding the month in which the charge is imposed. Subsequent charges are due and payable on or before the twentieth day of each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(2) The Department of Revenue must administer, collect, and enforce the surcharge in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36 of Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharge by the Department of Revenue.

(3) The Department of Revenue shall retain funds for the costs incurred to administer, collect, and enforce the fund which may include a part‑time employee with the related expenses for audit purposes. The funds withheld shall not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue including interest and penalties on delinquent surcharges.

(C) The Department of Health and Environmental Control is required to report each January fifteenth the current financial position of the Drycleaning Facility Restoration Trust Fund to the General Assembly. In addition, Department of Health and Environmental Control must include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five‑year budget projection. This report must also review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities in this State.

**SECTION 44‑56‑440.** Moratorium established on administrative and judicial actions by department.

(A) The Board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the discharge of drycleaning solvents to soil or waters of the State. This moratorium applies only to those facilities deemed eligible as defined in this section. The board may review and determine the appropriateness of the moratorium at least annually. This review shall include, but is not limited to, consideration of these factors:

(1) the solvency of the fund as described in Section 44‑56‑420;

(2) prioritization of the sites;

(3) public health concerns related to the sites;

(4) eligibility of the sites;

(5) corrective action plans submitted to the department.

After review, the board may suspend all or a portion of the moratorium if necessary.

(B) A drycleaning facility or wholesale supply facility that is being operated as a drycleaning facility or wholesale supply facility at the time a request for determination of eligibility is filed and at which there is contamination from drycleaning solvents is eligible under this section regardless of when the contamination was discovered if the drycleaning facility or wholesale supply facility:

(1) has been registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;

(2) is determined by the department to be in compliance with department regulations regulating drycleaning facilities or wholesale supply facilities;

(3) has third‑party liability insurance when and if the insurance becomes available at a reasonable cost, as determined by the Department of Insurance and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;

(4) has provided documented evidence of contamination by drycleaning solvents;

(5) has not been operated in a grossly negligent manner at any time after November 18, 1980.

(C) A drycleaning facility or wholesale supply facility that ceases to be operated as a drycleaning facility or wholesale supply facility before July 1, 1995, and before the time a request for determination of eligibility is filed at which there is contamination from drycleaning solvents is eligible under this section regardless of when the contamination was discovered provided the owner or operator of the drycleaning facility or wholesale supply facility or person provides documented evidence of the contamination by drycleaning solvents and the owner, operator, or person has paid all annual fees, surcharges, and solvent fees on every drycleaning facility in existence under their control since July 1, 1995, as required by the Department of Revenue.

(D) A drycleaning facility that has been contaminated as a result of the discharge of drycleaning solvents by a supplier of solvents during the delivery of drycleaning solvents to a drycleaning facility first must utilize the insurance of the supplier to the full extent of the coverage for site rehabilitation before any funds may be expended from the fund for the rehabilitation of that portion of the site which was contaminated by the discharge during delivery.

(E) If the facility started operation before six months after the effective date of this act and an eligible drycleaning or wholesale owner or operator or person applies for monies from the fund on or before:

(1) eighteen months after the effective date of this act, the deductible is one thousand dollars;

(2) thirty months after the effective date of this act, the deductible is twenty‑five thousand dollars.

An eligible drycleaning facility that has applied for monies from the fund prior to the effective date of this paragraph shall have a deductible of one thousand dollars regardless of any deductible previously assigned to the facility based on its application date or type of site. Any approved assessment or remedial costs in excess of one thousand dollars previously incurred by the owner, operator, or person shall be refunded, without interest, to such party by the department.

A facility first starting its operations on or after six months after the effective date of this act shall have a deductible of twenty‑five thousand dollars if it is determined to be eligible if the operator or person applies for money from the fund within six months of obtaining evidence of contamination.

(F) An owner of a drycleaning facility or wholesale supply facility or person seeking eligibility under this subsection shall submit an application for determination of eligibility to the department on forms provided by the department. The department shall review the application and request any additional information within ninety days. The department shall notify the applicant within one hundred eighty days as to whether the facility is eligible.

(G) Eligibility under this subsection applies to the site of the drycleaning facilities or wholesale supply facilities. A determination of eligibility or ineligibility is not affected by the subsequent conveyance of the ownership of the drycleaning facilities or wholesale supply facilities.

(H) This section does not apply to a site where the department has been denied site access to implement this section or to drycleaning facilities owned or operated by a local government or by the state or federal government.

(I) A site owned by an owner of a drycleaning facility or a person at any time subsequent to October 1, 1995, who misrepresents the number of employees upon which the registration fee provided for in Section 44‑56‑460 is based is not eligible for funds under this section.

**SECTION 44‑56‑450.** Reporting of discharged drycleaning solvent causing contamination.

(A) In order to identify drycleaning facilities and wholesale suppliers which have experienced contamination resulting from the discharge of drycleaning solvents and to assure the most expedient rehabilitation of these sites, the owners and operators of drycleaning facilities and wholesale suppliers and persons are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities. Forms must be distributed to owners and operators of drycleaning and wholesale supply facilities and to persons. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and persons of drycleaning and wholesale supply facilities within six months after the effective date of this act of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the Department of Health and Environmental Control a copy of each applicant’s registration materials within thirty working days of the receipt of the materials.

(B) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or regulations promulgated under this article may not be used directly as evidence of liability for the discharge in a civil or criminal trial arising out of the discharge.

**SECTION 44‑56‑460.** Establishment of priorities for rehabilitation at contaminated facilities.

(A) The fund must be used to rehabilitate sites that pose a significant threat to the public health, safety, or welfare. The department shall promulgate regulations to establish priorities for state‑conducted rehabilitation at contaminated drycleaning facilities or wholesale supply facilities sites based upon factors that include, but are not limited to:

(1) the degree to which human health, safety, or welfare may be affected by exposure to the contamination;

(2) the size of the population or area affected by the contamination;

(3) the present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting or will migrate to and substantially affect a known public or private source of potable water; and

(4) the effect of the contamination on the environment.

(B) Nothing in this subsection may be construed to restrict the department from modifying the priority status of a drycleaning facility or wholesale supply facility rehabilitation site where conditions warrant. Criteria for determining completion of site rehabilitation program tasks and site rehabilitation programs must be based upon the factors set forth in subsection (A)(1) and these factors:

(1) individual site characteristics, including natural rehabilitation processes;

(2) applicable state water quality standards;

(3) whether deviation from state water quality standards or from established criteria is appropriate, based upon the degree to which the desired rehabilitation level is achievable and can be reasonably and cost‑effectively implemented within available technologies or control strategies, except that, where a state water quality standard is applicable, the deviation may not result in the application of standards more stringent than the standard;

(4) it is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where available technology is not anticipated to meet water quality standards, the department, at its discretion, is encouraged to use innovative technology including, but not limited to, technology which has been field tested through the federal innovative technology program and which has engineering and cost data available;

(5) nothing in this section may be construed to restrict the department from temporarily postponing completion of a site rehabilitation program for which drycleaning restoration funds are being expended whenever the postponement is considered necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility site with a higher priority status;

(6) the department shall provide the rehabilitation of eligible drycleaning facilities and wholesale supply facilities consistent with this subsection. Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

(C) The department may not expend more than two hundred fifty thousand dollars from the fund annually to pay for the costs at any one eligible site for the activities described in Section 44‑56‑420(B).

(D) The department shall promulgate regulations necessary for the implementation of this section.

(E) The department shall create a mechanism in which consultants’ credentials, work objectives and plans, proposed costs ranging from assessment, cleanup, and monitoring are outlined and submitted in writing for the department’s approval. The department shall establish a list of those vendors who are qualified to perform work to be financed by the fund. Vendors must be recertified every two years.

**SECTION 44‑56‑470.** Annual registration and fees for drycleaning facilities.

(A) For each drycleaning facility owned and in operation, the owner or operator of the facility or person shall register with and pay initial registration fees to the Department of Revenue by October 1, 1995, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner, or operator, for the twelve‑month period preceding payment of the fee.

(B) An initial and annual registration fee for each drycleaning facility with:

(1) up to four employees is seven hundred fifty dollars;

(2) five to ten employees is one thousand five hundred dollars;

(3) eleven or more employees is two thousand two hundred fifty dollars.

(C) The provisions of Title 12 apply to the collection and enforcement of the fees by the Department of Revenue.

(D) The Department of Revenue must retain funds for the costs incurred to collect and enforce the fund which may include a part‑time employee with the related expenses for audit purposes. The funds withheld shall not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the registration fee, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing the registration fee, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the registration fee include all funds collected and received by the Department of Revenue including interest and penalties on delinquent fees.

(E) Revenue derived from the registration fees must be submitted to the State Treasurer and credited to the Drycleaning Facility Restoration Trust Fund.

(F) Before a year after the effective date of this act, an owner or operator of a drycleaning facility in operation before six months after the effective date of this act, shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used and around an area in which solvents or waste containing solvents are stored. The containment must meet the following criteria:

(1) the dikes or containment structures must be capable of containing one‑ third of the capacity of the total tank capacity of each machine;

(2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

(3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvents in use at the facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

(4) to the extent practicable, an owner of a drycleaning facility or person shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released;

(5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

(6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvents in use at the facility for not less than seventy‑two hours.

(G) For drycleaning facilities that commence operating on or after six months after the effective date of this act, the owners or operators of these facilities or persons, before the commencement of operations, shall install beneath each machine or item of equipment in which drycleaning solvents are used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one‑third of the total tank capacity of each machine, whichever is greater. Dikes or containment structures must be installed before delivery of any drycleaning solvents to the facility. All dikes or containment structures shall meet all criteria of Section 44‑56‑470(F).

(H) A person or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

(I) Failure to comply with the requirements of this section constitutes gross negligence with regard to determining site eligibility.

**SECTION 44‑56‑480.** Surcharge on drycleaning solvent and halogenated drycleaning fluid.

(A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated cleaner is levied on each gallon to be used for drycleaning purposes when first imported into or produced in the State. Nonhalogenated cleaners purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. A drycleaning facility that has made an election not to be under the provisions of this article pursuant to Section 44‑56‑485(A) or (B) may request a statement of nonparticipation from the Department of Revenue so as to demonstrate its status under this article and its exemption from the surcharge provided for in this subsection.

(B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise must register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person must register as a producer or importer of drycleaning solvent. Persons operating at more than one location only are required to have a single registration. The fee for registration is thirty dollars. Failure to register before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person must be fined up to twenty‑five thousand dollars or imprisoned up to thirty days.

(C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage facility. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. An owner, operator, or person, who has purchased drycleaning solvent for sale, use, consumption, or distribution in this State must document that the surcharge imposed by this section has been paid or must pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to owners, operators, or persons of drycleaning facilities except the surcharge imposed by this section must not be charged to a facility possessing a statement of nonparticipation pursuant to Section 44‑56‑480(A).

(E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms as the Department of Revenue prescribes. The proceeds of the surcharge, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted by the Department of Revenue to the State Treasurer to be credited to the Drycleaning Facility Restoration Trust Fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent surcharges.

(F) The Department of Revenue shall administer, collect, and enforce the surcharge authorized under this section in the manner that sales and use taxes are administered, collected, and enforced under Chapter 36 of Title 12, except no timely payment discount or exemptions or exclusions are allowed. Provisions of Title 12 regarding the Department of Revenue’s authority to audit and make assessments, the keeping of books and records, and interest and penalties on delinquent taxes apply.

(G) The Department of Revenue must retain funds for the costs incurred to administer, collect, and enforce the program. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the surcharge include interest and penalties collected by the Department of Revenue.

(H) The Department of Revenue may establish audit procedures and assess delinquent surcharges.

(I) Drycleaning solvent used for drycleaning exported from the first storage facility at which it is held in this State by the producer or importer is exempt from the surcharge pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information as it considers necessary in order to approve the refund or credit.

(J) The Department of Revenue may authorize:

(1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

(2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

(3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

**SECTION 44‑56‑485.** Applicability of Article 4; election to place facility under provisions of article; election to remove facility from requirements of article.

(A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to dry drop‑off facilities whose clothing and other fabrics are cleaned only by such a drycleaning facility. However, an owner or operator of a facility or person may elect to place the facility under the provisions of this article by paying the required annual fee for the facility before October 1, 1995. If an owner or operator of a facility or person does not elect to place a facility under this article before October 1, 1995, the current or a future owner or operator of the site or person is prohibited from receiving any funds or assistance under this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a facility under this article. Additionally, an owner, operator, or person who does not elect to place a facility under this article is prohibited from receiving any funds or assistance under this article for any site the owner, operator, or person currently or previously operated or abandoned.

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or person of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other.

(C) Notwithstanding subsections (A) and (B) of this section, if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) above, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided under this article. An electing drycleaning facility is liable for payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating, but is not liable for any penalties or interest. An electing drycleaning facility may pay the back taxes and fees that the facility is required to pay under this subsection by making monthly installments toward full payment of all back taxes and fees. The monthly installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid on or before July 1, 2006.

(D) Notwithstanding any other provision of this article, any person or owner or operator of a drycleaning facility that has not registered with the Department of Revenue and complied with the provisions of this article may voluntarily register with the Department of Revenue on or before July 1, 2005, without incurring any penalties or interest. Payment of all taxes and fees due pursuant to this article is required to be made from the later of July 1, 1995, or the date the drycleaning facility began operating. Any person or owner or operator of a drycleaning facility that does not voluntarily register under this provision is subject to interest, penalties, and payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating. No fees will be prorated or refunded for a business in operation for less than twelve months.

(E) Notwithstanding any other provisions in this article, the department may direct the Department of Revenue to allow a person or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the person or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The person or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering person, owner, or operator is not liable for penalties. No fees will be prorated or refunded for a business in operation for less than twelve months.

**SECTION 44‑56‑490.** Violations.

(A) Whenever the department finds that a person is in violation of a provision of this article or a regulation promulgated under this article, the department may issue an order requiring the owner, operator, or person to comply with the provision or regulation or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction.

(B) An owner, operator, or person who violates a provision of this article, a regulation promulgated under this article, or an order of the department issued under subsection (A) is subject to a civil penalty not to exceed ten thousand dollars for each day of violation.

(C) An owner, operator, or person who wilfully violates a provision of this article, a regulation promulgated under this article, or an order of the department issued under subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five thousand dollars per day of violation or imprisoned for not more than one year or both.

**SECTION 44‑56‑495.** Drycleaning Advisory Council created.

(A) There is created the Drycleaning Advisory Council to advise the Department of Health and Environmental Control on matters relating to regulations and standards which affect drycleaning and related industries.

(B) The council is composed of:

(1) five representatives of the drycleaning industry;

(2) one representative of the wholesale industry;

(3) one representative of the real estate industry;

(4) one environmental engineer;

(5) one representative of the banking industry;

(6) two representatives from the Department of Health and Environmental Control, one of whom must be an administrator and one of whom must represent water quality control;

(7) a representative of the Department of Revenue;

(8) a representative of the Department of Insurance;

(9) a representative of the State Budget and Control Board;

(10) a representative of the Department of Natural Resources, Division of Water Resources.

(C) Members enumerated in subsection (B)(1) through (5) may be appointed by the Governor with the advice and consent of the Senate and shall serve terms of two years and until their successors are appointed and qualify. The members enumerated in subsection (B)(6) through (10) must be appointed by the respective directors or commissioner of the appropriate agency, and all serve ex officio for terms of two years and until their successors are appointed and qualify. The chairman of the council must be elected by the members of the council at the first meeting of each new term.

ARTICLE 5.

 WASTE ASSESSMENTS

**SECTION 44‑56‑510.** General provisions.

Any waste disposed of in a land disposal site permitted to receive hazardous waste for disposal and not assessed a fee under the provisions of Article 1 of this chapter must be assessed as follows:

(1) a fee of thirteen dollars and seventy cents a ton of wastes generated and disposed of in this State by landfilling or other means of land disposal;

(2) for all wastes generated outside of the State and received at a facility during the quarter, each owner/operator of a hazardous waste land disposal facility shall remit to the department a fee of thirteen dollars and seventy cents a ton.

ARTICLE 7.

 BROWNFIELDS/VOLUNTARY CLEANUP PROGRAM

**SECTION 44‑56‑710.** Purpose.

The purpose of the voluntary cleanup program is to:

(1) enable the expansion, redevelopment or return to use of industrial and commercial sites whose redevelopment is complicated by real or perceived environmental contamination;

(2) provide an incentive to conduct response actions at a site by providing nonresponsible parties a covenant not to sue, contribution protection, and third party liability protection, or by providing responsible parties with a covenant not to sue for the work done in completing the response actions specifically covered in the contract and completed in accordance with the approved work plans and reports; and

(3) provide reimbursement to the department for oversight costs.

**SECTION 44‑56‑720.** Definitions.

As used in this article:

(1) “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act and its amendments, 42 U.S.C. 9601, et seq.

(2) “Contaminant” includes, but is not limited to, any element, substance, compound, or mixture, including disease‑causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

(3) “Contamination” means impact by a contaminant, petroleum, or petroleum product.

(4) “Department” means the South Carolina Department of Health and Environmental Control.

(5) “Nonresponsible party” means any party which is neither:

(i) a responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor

(ii) a parent, subsidiary of, or successor to a responsible party.

(6) “Oversight costs” means those costs, both direct and indirect, incurred by the department in implementing the voluntary cleanup program.

(7) “Petroleum” and “petroleum product” means crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.

(8) “Property” means that portion of the site which is subject to the ownership, prospective ownership, or possessory or contractual interest of a responsible party or a nonresponsible party.

(9) “Response action” means any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.

(10) “Responsible party” means:

(a) the owner and operator of a vessel or a facility, as these terms are defined in CERCLA;

(b) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, as these terms are defined in CERCLA;

(c) any person who by contract, settlement, or otherwise arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, as these terms are defined in CERCLA; and

(d) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release or a threatened release which causes the incurrence of response costs of a hazardous substance, as such terms are defined in CERCLA; and

(e) any person who owns or operates or who owned or operated an above ground or underground storage tank from which petroleum or petroleum products have been released or who owns and operates or who owned or operated a property on which a petroleum release has occurred; however, the exemptions of Section 44‑2‑80(B) and (C) apply.

(11) “Site” means all areas where a contaminant, petroleum, or petroleum product has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; “site” does not include any consumer product in consumer use or any vessel.

(12) “Voluntary cleanup” means a response action taken under and in compliance with this article.

(13) “Voluntary cleanup contract” means a contract entered into between the department and a responsible or nonresponsible party to conduct a voluntary cleanup.

**SECTION 44‑56‑730.** Site and participant eligibility.

(A) A site known or perceived to be impacted by a contaminant, petroleum, or a petroleum product is eligible for participation in the voluntary cleanup program unless the site is listed or proposed to be listed on the National Priorities List pursuant to CERCLA Section 105.

(B) A responsible party who is not subject to a department order or permit for assessment and remediation for a site is eligible to participate in the voluntary cleanup program for that site.

(C) All nonresponsible parties who demonstrate financial viability to meet their obligations under the contract and who will undertake or whose nonresponsible party lenders, signatories, parents, subsidiaries, and successors will undertake the expansion, redevelopment, or return to use of the property are eligible to participate in the voluntary cleanup program.

**SECTION 44‑56‑740.** Requirements for contracts entered into by or on behalf of responsible parties.

(A)(1) A voluntary cleanup contract entered into by or on behalf of a responsible party shall contain at a minimum:

(a) submission of a work plan, health and safety plan, and provisions for written progress reports;

(b) a grant of access to perform and oversee response actions; and

(c) a legal description of the property.

(2) A voluntary cleanup contract shall stipulate that:

(a) the contract is not a release or covenant not to sue for any claim or cause of action against a responsible party who is not a signatory to the contract;

(b) the contract does not limit the right of the department to undertake future response actions;

(c) the contract becomes null and void if the responsible party submits information that is false or incomplete and that is inconsistent with the intent of the contract;

(d) the contract is not a release or covenant not to sue for claims against a responsible party for matters not expressly included in the contract; and

(e) the contract’s covenant not to sue must be revoked for a responsible party, or its successors, for conducting activities at the site that are inconsistent with the terms and conditions of the voluntary cleanup contract, and these activities constitute cause to terminate the contract.

(3) After signing a voluntary cleanup contract, the responsible party shall prepare and submit the appropriate work plans and reports to the department. The department shall review and evaluate the work plans and reports for accuracy, quality, and completeness. If a work plan or report is not approved, the department shall notify the party concerning additional information or commitments needed to obtain approval.

(4) A voluntary cleanup contract executed on behalf of a responsible party inures to the benefit of the responsible party’s signatories, parents, successors, assigns, and subsidiaries.

(5) A voluntary cleanup contract must give the responsible party the department’s covenant not to sue for the work done in completing the response actions specifically covered in the contract and completed in accordance with the approved work plans and reports. The covenant not to sue must be contingent upon the department’s determination that the responsible party successfully and completely complied with the contract.

(B)(1) Upon completion of the contract, the responsible party must submit a request to the department for a certificate of completion. If the department determines that a responsible party has successfully and completely complied with the contract and has successfully completed the voluntary cleanup approved under this article, the department shall certify that the action has been completed by issuing the party a certificate of completion. The certificate of completion shall:

(a) provide a covenant not to sue for the benefit of the responsible party, its signatories, parents, successors, and subsidiaries;

(b) indicate the proposed future land use and if a restrictive covenant is necessary for protection of health, safety, and welfare of the public, include a copy of the restrictive covenant entered into between the department and the responsible party and filed with the Register of Deeds or Mesne Conveyances in the appropriate county. A restrictive covenant remains in effect until a complete remediation is accomplished for unrestricted use; and

(c) include a legal description of the property and the name of the property’s owner.

(2) If the department determines that the responsible party has not completed the contract satisfactorily, the department shall notify in writing the responsible party and the current owner of the property, if different from the responsible party who signed the contract, that the contract has not been satisfied and shall identify any deficiencies.

(3) The covenant not to sue is revoked for a party or successor who changes the land use from the use specified in the certificate of completion to one which requires a more comprehensive cleanup.

(C) The department shall charge for and retain all monies collected as oversight costs. The South Carolina Hazardous Waste Contingency Fund must be reimbursed for any funds expended from this fund pursuant to Section 44‑56‑200.

(D) Public participation procedures for a voluntary cleanup contract entered into by a responsible party shall follow the same guidelines for public participation as those for the State CERCLA program and not inconsistent with the National Contingency Plan.

(E)(1) The department or the responsible party may terminate a voluntary cleanup contract by giving thirty days advanced written notice to the other. The department may not terminate the contract without cause.

(2) The covenant not to sue must be revoked for a party or its successors, or both, for conducting activities at the site that are inconsistent with the terms and conditions of the voluntary cleanup contract, and these activities constitute cause to terminate the contract.

(3) If, after receiving notice that costs are due and owing, the responsible party does not pay the department oversight costs associated with the voluntary cleanup in a timely manner, the department may bring an action to recover the amount owed and all costs incurred by the department in bringing the action including, but not limited to, attorney’s fees, department personnel costs, witness costs, court costs, and deposition costs.

(4) Termination of the contract does not affect any right the department has under any law to require additional response actions or recover costs.

(F) The department’s decision to enter or not to enter into a contract is final and is not a contested case within the meaning of the South Carolina Administrative Procedures Act, Section 1‑23‑10, et seq.

**SECTION 44‑56‑750.** Prerequisites to and provisions of contract entered into by or on behalf of nonresponsible party.

(A)(1) Before entering into a voluntary cleanup contract, the nonresponsible party must:

(a) submit a Phase One Environmental Site Assessment conducted in accordance with all appropriate inquiry standards of CERCLA, or other evidence of conducting all appropriate inquiry in accordance with CERCLA;

(b) identify a contact person, whose name, address, and telephone number must be updated throughout the term of the contract;

(c) provide a legal description of the property; and

(d) describe the plan for the expansion, redevelopment, and return to use of the property.

(2) Before entering into a voluntary cleanup contract, the nonresponsible party must certify to the department that:

(a) it is not a responsible party at the site;

(b) it is not a parent, successor, or subsidiary of a responsible party at the site;

(c) its activities will not aggravate or contribute to existing contamination on the site or pose significant human health or environmental risks; and

(d) it is financially viable to meet the obligations under the contract.

(B)(1) A voluntary cleanup contract entered into by or on behalf of a nonresponsible party shall contain at a minimum:

(a) an agreement to conduct the scope of work provided for in the contract and submission of a work plan prepared in accordance with the scope of work required by the department, health and safety plan, and provisions for written progress reports;

(b) a grant of access to perform and oversee response actions;

(c) a legal description of the property;

(d) a provision for the department to have the opportunity to inspect and to copy any and all documents or records in the nonresponsible party’s custody, possession, or control which identifies or potentially identifies a responsible or potentially responsible party; and

(e) a provision that the department has an irrevocable right of access to the property once the property is acquired by the nonresponsible party. The right of access remains until a complete remediation is accomplished for unrestricted use.

(2) A voluntary cleanup contract shall stipulate that it:

(a) is not a release or covenant not to sue for any claim or cause of action against a party who is not a signatory to the contract;

(b) does not limit the right of the department to undertake future response actions;

(c) is not a release or covenant not to sue for claims against a party for matters not expressly included in the contract;

(d) does not release the nonresponsible party from liability for any contamination that the nonresponsible party causes or contributes to the site; and

(e) becomes null and void if the nonresponsible party submits information that is false or incomplete and that is inconsistent with the intent of the contract.

(3) After signing a voluntary cleanup contract, the nonresponsible party shall prepare and submit the appropriate work plans, health and safety plan, and reports to the department. The department shall review and evaluate the work plans and reports for accuracy, quality, and completeness. If a work plan or report is not approved, the department shall notify the party concerning additional information or commitments needed to obtain approval.

(4) A voluntary cleanup contract executed on behalf of a nonresponsible party must, in the department’s sole discretion, provide a measurable benefit to the State, the community, or the department.

(5) After considering existing and future use or uses of the property, the department may approve submitted work plans or reports that do not require removal or remedy of all discharges, releases, and threatened releases at a site as long as the response action:

(a) is consistent and compatible with the proposed future use of the property;

(b) will not contribute to or exacerbate discharges, releases, or threatened releases;

(c) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases; and

(d) requires deed notices or restrictions, or both, determined appropriate by the department, to be placed on the property after completion of the work plan.

(6) A voluntary cleanup contract executed on behalf of a nonresponsible party inures to the benefit of the nonresponsible party’s lenders, signatories, parents, subsidiaries, and successors. A voluntary cleanup contract executed on behalf of a nonresponsible party does not inure to the benefit of a responsible party.

(7) The voluntary cleanup contract may provide the nonresponsible party protection from claims for contribution under CERCLA Section 113, 42 U.S.C. Section 9613 and Section 44‑56‑200, et seq. of the 1976 Code regarding environmental conditions at the site before the signing of the contract. This protection may be granted at the conclusion of the period allowed for comment from the site’s potentially responsible parties as identified through a reasonable search.

(C)(1) Upon completion of the contract, the nonresponsible party must submit a request to the department for a certificate of completion. If the department determines that a nonresponsible party has successfully and completely complied with the contract and has completed the voluntary cleanup approved under this article, the department shall certify that the action has been completed by issuing the party a certificate of completion. The certificate of completion shall:

(a) provide the department’s covenant not to sue the nonresponsible party for liability for existing contamination, except for releases and consequences that the nonresponsible party causes. This liability protection must not be granted or must be revoked if a contract or letter of completion is acquired by fraud, misrepresentation, knowing failure to disclose material information, or failure to satisfactorily complete the approved work plan;

(b) indicate the proposed future land use and if a restrictive covenant is required, include a copy of the restrictive covenant to be entered into between the department and the nonresponsible party and record the restrictive covenant with the Register of Deeds or Mesne Conveyances in the appropriate county. A restrictive covenant remains in effect until a complete remediation is accomplished for unrestricted use; and

(c) include a legal description of the property and the name of the property’s owner.

(2) If the department determines that the nonresponsible party has not completed the contract satisfactorily, the department shall notify in writing the nonresponsible party and the current owner of the property, if different from the nonresponsible party who signed the contract, that the contract has not been satisfied and shall identify any deficiencies.

(3) The covenant not to sue, liability protection, and contribution protection provided in this section shall be revoked, after reasonable notice and opportunity to cure as provided for by subsections (C)(2) and (F)(1) of this section, for a party or successor who changes the land use from the use specified in the certificate of completion to one which requires a more comprehensive cleanup.

(4) The covenant not to sue, liability protection, and contribution protection provided in this section may be revoked, after reasonable notice and opportunity to cure as provided for by subsections (C)(2) and (F)(1) of this section, for a party who fails to make material progress toward the expansion, redevelopment, or reuse of the property as provided for in the contract. These activities shall constitute cause to terminate the contract.

(D) The department shall charge for and retain all monies collected as oversight costs. The South Carolina Hazardous Waste Contingency Fund must be reimbursed for any funds expended from the fund pursuant to Section 44‑56‑200.

(E)(1) Upon signature of a voluntary cleanup contract by a nonresponsible party, the department shall provide notice and opportunity for public participation. Notification of the proposed contract must be placed in a newspaper in general circulation within the affected community. A comment period must be provided for thirty days from the date of newspaper publication. The public notice period must precede the department’s scheduled date for execution of the contract. A public meeting must be conducted upon request to the department’s Bureau of Land and Waste Management by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. Under any other circumstances, a public meeting may be conducted at the department’s discretion.

(2) Beginning with the thirty‑day notice period and continuing through completion of the terms of the contract, the nonresponsible party must post a sign, in clear view from the main entrance to the property, stating the name, address, and telephone number of a contact person for information describing the property’s response actions and reuse.

(F)(1) The department or nonresponsible party may terminate a voluntary cleanup contract by giving thirty days’ advance written notice to the other. The department may not terminate the contract without cause.

(2) The covenant not to sue, liability protection, and contribution protection must be revoked for a party, or its successors, for conducting activities at the property that are inconsistent with the terms and conditions of the voluntary cleanup contract, and these activities constitute cause to terminate the contract.

(3) If, after receiving notice that costs are due and owing, the nonresponsible party does not pay to the department oversight costs associated with the voluntary cleanup contract in a timely manner, the department may bring an action to recover the amount owed and all costs incurred by the department in bringing the action including, but not limited to, attorney’s fees, department personnel costs, witness costs, court costs, and deposition costs.

(4) Termination of the contract does not affect any right the department has under any law to require additional response actions or recover costs.

(G) The department’s decision to enter or not to enter into a contract is final and is not a contested case within the meaning of the South Carolina Administrative Procedures Act, Section 1‑23‑10, et seq.

(H)(1) A nonresponsible party is not liable to any third party for contribution, equitable relief, or claims for damages arising from a release of contaminants, petroleum, or petroleum products that is the subject of a response action included in the nonresponsible party voluntary cleanup contract provided for in this section.

(2) This limitation of liability commences on the date of execution of the nonresponsible party voluntary cleanup contract by the department; however, this limitation must be withdrawn automatically if the nonresponsible party voluntary cleanup contract is lawfully terminated by any party. This limitation of liability applies only to:

(a) the parties to the nonresponsible party voluntary cleanup contract and to the nonresponsible party’s lenders, signatories, parents, subsidiaries, and successors; and

(b) “existing contamination”, as defined in the nonresponsible party voluntary cleanup contract.

This limitation of liability does not apply to any release caused by or attributable to the nonresponsible party or its lenders, signatories, parents, subsidiaries, or successors.

**SECTION 44‑56‑760.** Review of program.

Beginning in the year 2010, the department shall review the voluntary cleanup program established pursuant to this article and report to the General Assembly on the activities of the program and, where applicable, make recommendations for any needed changes or improvements.

ARTICLE 9.

 HAZARDOUS WASTE MANAGEMENT RESEARCH FUND

**SECTION 44‑56‑810.** Creation of fund; purpose; financing and expenditures.

There is created within the State Treasury the Hazardous Waste Management Research Fund, separate and distinct from the general fund of the State, to ensure the availability of funds for the conduct of research related to waste minimization and reduction and for the development of more effective and efficient methods of conducting governmental response actions at uncontrolled hazardous waste sites. The fund must be financed in accordance with Section 44‑56‑160(B) and expended only in accordance with the provisions of this article.

**SECTION 44‑56‑820.** Universities Research and Education Foundation authorized to expend monies from fund; purposes.

The South Carolina Universities Research and Education Foundation is authorized to expend monies in the Hazardous Waste Management Research Fund only as provided in this article. The foundation shall establish a comprehensive research program with a primary emphasis on improving current hazardous waste management practices including, but not limited to, waste minimization and reduction and the development of more effective and efficient methods of conducting governmental response actions at abandoned or uncontrolled hazardous waste sites. The fund must be used for research that will:

(1) have a direct and positive impact on waste minimization and reduction in this State;

(2) recommend strategies to deal effectively with major existing hazardous waste management problems in this State and to improve current hazardous waste management practices;

(3) provide research and recommendations on cost‑effective hazardous waste management techniques and new or emerging technologies for use in the public and private sectors including, but not limited to, the development of more efficient and effective methods of cleaning up abandoned or uncontrolled hazardous waste sites;

(4) provide hazardous waste management education, training, and public information;

(5) assess the impact of existing and emerging hazardous waste management practices on the public health and environment;

(6) provide research and recommendations on other waste management practices that may be identified through research conducted pursuant to this section.

**SECTION 44‑56‑830.** Foundation to submit annual report to Select Oversight Committee.

The foundation shall submit an annual report to the Hazardous Waste Management Select Oversight Committee created pursuant to Section 44‑56‑840 fully accounting for the expenditures of the fund and the results realized from the research program.

**SECTION 44‑56‑840.** Hazardous Waste Management Select Oversight Committee.

(A) There is created a Hazardous Waste Management Select Oversight Committee to monitor funds generated from the fees imposed under Section 44‑56‑170(C) and (E) and designated for the fund under Section 44‑56‑810. The committee shall oversee the research efforts and projects approved for funding by the foundation. Notwithstanding any other provision of law, the committee is composed of:

(1) the Governor or his designee;

(2) the chairman of the House Agriculture and Natural Resources Committee or his designee;

(3) the chairman of the Senate Agriculture and Natural Resources Committee or his designee;

(4) the chairman of the House Labor, Commerce and Industry Committee or his designee;

(5) the chairman of the Senate Labor, Commerce and Industry Committee or his designee;

(6) the Director of the Department of Health and Environmental Control or his designee;

(7) one member representing business and industry appointed by the Governor;

(8) one public member appointed by the Governor;

(9) one member representing environmental interests appointed by the Governor;

(10) the Lieutenant Governor or his designee.

(B) The chairman of the Select Oversight Committee must be elected from the membership of the committee.

(C) The committee shall meet quarterly and shall submit annually a report to the General Assembly on all funds monitored under the provisions of this section before March fifteenth. Staff support must come from existing staff assigned by the committee.

(D) Members of the committee shall receive the usual per diem, subsistence, and mileage that is provided by law for members of state boards, committees, and commissions. Per diem, subsistence, and mileage must be paid from the Hazardous Waste Management Research Fund.